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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,551	07/23/2001	Jeffrey P. Callister	687-470	4767

7590 07/25/2007  
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EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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07/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/911,551

**Applicant(s)**

CALLISTER ET AL.

**Examiner**

Michael Brown

**Art Unit**

3772

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,7-9,11,12,15-24,26-33,35-57,59-66 and 69-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-9,11-12,15-24,26-33,35-57,59-66 and 69-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-9, 11-12, 15-24 and 43-57, 59-66, 68-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan '348 in view of Mariant '027, along with Phelps '259.

Kaplan discloses in figures 1-6C a device for treating an enlarging body lumens that anticipates a device for occluding a body lumen passageway comprising a tubular member 4, having a first end and a second end (fig. 1A), one end is open (1B), a lumen extending therein 12, to the open end, which is expandable in the body lumen from a first configuration with a first transverse dimension to a second larger configuration with a second larger dimension (col. 3, lines 11-16), the tubular member includes an open framework structure (the openings in the tubular member provide an open framework), a fibrous member (14, 16), made of polymeric material (col. 11, lines 18-21), fibrous member is woven strands (col. 7, lines 30-33), of biocompatible material (col. 11, lines 18-20), connected to the tubular member (fig. 1B), the fibrous material is disposed within the lumen (fig. 1B), in a plurality of section (fig. 1A), at a first end (fig. 1A), the tubular member is made of stainless steel (col. 5, lines 10-14), the tubular member includes anchoring members (col. 5, lines 48-50), to secure the tubular member to the

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walls of a body lumen, the tubular member expands from a first configuration to a second larger configuration by release of radially compressive force, the tubular member is formed of a superelastic material (col. 3, lines 11-15), the second configuration of the tubular member has a radially expandable diameter which increase along at least a section thereof from the first end of the tubular member to the second end of the tubular member (col. 3, lines 11-16), the tubular member has a lattice framework (2A), the lattice framework is thin-walled metallic tube having a pattern of cuts 10, along the tubular member, the framework includes a braid of wire ( a helical strand woven into the tubular member, col. 3, lines 23-26), helical coil (col. 5, lines 55-58), the tubular member is configure to promote epithelialization (col. 7, lines 52-66), tissue growth (col. 7, lines 52-66), capable of provoking an inflammatory response (col. 8, lines 55-58), through copper (which is old and well known in the art), the inflammatory material is radioactive (col. 5, lines 18-21) and the tubule member has an open wall structure (fig. 1A). However, Kaplan doesn't disclose the fibrous material being bundled strands. Mariant teaches in figures 1-6 an occlusion device comprising fibers 12 that are in bundles (col. 5, lines 12-16) and the fibers permit tissue growth (col. 5, lines 45-51). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the fibers as taught by Mariant could be substituted for the fibers disclosed by Kaplan in order to permit tissue growth into the tubular member. The fibers could be bundles as taught by Kaplan. The fibrous material is porous (nylon) as taught by Mariant. The fibrous material can be coated to promote tissue growth and the transverse dimensions of the strands is a design choice. Phelps teaches in figures

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1-6C a fibrous member that is a mesh 130. The fibrous mesh as taught by Phelps could be used to increase tissue growth around and inside of the tubular open framework.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Phelps '259.

Phelps '259 teaches in figures 1-5an occluding device comprising a plug attached to fibers (col. 3, lines 15-20). The plug is capable of provoking inflammatory response. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the plug as taught by Phelps could be used to provide an inflammatory response to stimulate tissue growth, while at the same time occluding the fallopian tube.

Claims 28-33 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan in view Mariant, along with Phelps.

Kaplan discloses in figures 1-6C a device for treating body lumens, that anticipates a contraceptive, substantially as claimed, as set forth above. Mariant teaches in figures 1-6 an occluding device comprising fibers to promote tissue growth. Phelps teaches in figures 1-5 fibers formed as a mesh. It would have been obvious to one having ordinary skill in the art at the time that the invention that the fibers as taught by Mariant could be formed as a mesh as taught by Phelps in order to allow tissue growth in the lumen and around the tubular member. Note: Kaplan discloses a catheter (col. 10, lines 35-38) used to insert the tubular member.

### ***Response to Arguments***

Applicant's arguments filed May 14, 2007 have been fully considered but they are not persuasive. Applicant argues that Kaplan doesn't disclose a tubular member that is configured to promote epithelialization. However, Kaplan discloses a tubular member that has the same open tubular configuration that the present invention illustrates. Upon inserting the tubular member disclosed by Kaplan into the fallopian tube epithelialization (covering of the tubular member by cells) will occur. The tubular member disclosed by Kaplan and the fibrous material is capable of occluding the fallopian tube and enhancing tissue growth into the tubular member. The tubular member disclosed by Kaplan is capable of being secured to the walls of a fallopian tube. Applicant argues that Kaplan doesn't disclose enlarging a body lumen and later occluding the body lumen. However, Kaplan is design to be inserted in a body lumen. Kaplan is made of a shape memory material. Thus, allowing Kaplan to expand and later contract to occlude a body lumen.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/  
July 20, 2007